IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6713 of 2007()

CRIME NO. 445/07 OF THAMARASSERRY POLICE STATION

PETITIONERS/ACCUSED NO.2 TO 3

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1. FATHIMA, PUTHIYA PARAMBIL VEEDU
   SOUTH MALAPPURAM, PUTHUPPADY P.O. THAMARASSERRY.

2. RINAS,S/O.AHAMMAD,
   PULLADY VEEDU, CHALIKKODU P.O.,ELETTIL
   VATTOLY, KODUVALLY.

3. MUHAMMAD M.P.,S/O.HUSSAIN HAJI
   MANNARPILALIL VEEDU, MANNILKADAVU,
   VAVADU P.O.,KODUVALLY.

BY ADV. SRI.ALEXANDER GEORGE
SRI.DILIP MOHAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED
   BY ITS PUBLIC PROSECUTOR
   HIGH COURT OF KERALA,ERNAKULAM.

2. THE SUB INSEPCTOR OF POLICE
   THAMARASSERRY POLICE STATION.

BY PUBLIC PROSECUTORSRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6713 of 2007

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Dated this the 5th day of November, 2007

O R D E R

Application for anticipatory bail. Altogether there are four accused persons. The first accused is the husband of the defacto complainant, who is now residing abroad. Accused 2 to 4, i.e. the petitioners herein, are relatives of the husband of the defacto complainant, they being his mother, brother and uncle respectively.

2. The crux of the allegations is that the accused persons are guilty of matrimonial cruelty of culpable variety punishable under Sections 498A and 324 I.P.C. against the defacto complainant. A private complaint was filed by the defacto complainant, which was referred to the police under Section 156 (3) Cr.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is strain in the

matrimonial relationship between the spouses. The marriage had taken place in 2003. One child has been born in the wedlock. Because of the strain in the marital relationship, false allegations are raised. The petitioners do not deserve to suffer the undeserved trauma of arrest and incarceration in prison. Subject to any appropriate conditions, anticipatory bail may be granted to the petitioners, it is prayed.

4. The learned Prosecutor opposes the application. He submits that there are consistent allegations of cruelty. The learned Prosecutor has brought to my notice two wound certificates issued on 16.3.06 and 3.9.2007, in which allegations are raised of physical cruelty by her mother-in-law against the defacto complainant. The learned counsel for the petitioners urges that these are totally false allegations and the falsity can be found from the nature of the allegations as also from the nature of the alleged injuries suffered. The first allegation is that the mother-in-law had gone to the house of the daughter-in-law and assaulted her by beating her with a stick. The second allegation is that she had beaten her with hands. In the latter incident there was no injury whatsoever. In the former incident, abrasion, swelling and pain

are noted. The learned counsel for the petitioners submits that in respect of that incident a counter case has also been registered.

5. Be that as it may, having considered all the relevant inputs, I am satisfied that this is a fit case where directions under Section 438 Cr.P.C. can be issued in favour of the petitioners. Appropriate conditions can of course be imposed in the interests of a fair, efficient and expeditious investigation.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 12.11.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 13.11.07 and 14.11.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 12.11.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to his surrender on 12.11.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 12.11.2007.

(R. BASANT)
Judge

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